# MONTANA LEGISLATIVE HISTORY

Chapter 496 ~~19~~ 2001

Bill H 208 S _____ Original bill & history ✓ C

| H. Committee on Judiciary | | S. Committee on Judiciary | |
|---|---|---|---|
| Hearing Date(s) 1/16 | ✓ C | Hearing Date(s) 3/1 | ✓ C |
| 1/16 | ✓ C | 3/23 | ✓ C |
| | C | | C |
| | C | | C |
| Date Out 1-23 | ✓ C | | |

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Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

From Conference Committee 4-17

3/12 Transmitted to Governor
3/21 Signed by Governor
3/21 Chapter Number Assigned
Chapter Number 96
Effective Date: 10/01/2001 - All Sections

HB 205 Introduced by Harris *LC0672 Drafter: Heiman*

Dollars for Education -- Car Rental, Realty Transfer, Bed, and Tobacco Taxes

11/28 Fiscal Note Needed
1/08 Introduced
1/08 Referred to Taxation
1/08 Fiscal Note Requested
1/15 Fiscal Note Received
1/17 Fiscal Note Printed
1/17 Hearing
1/31 Tabled in Committee
3/29 Missed Deadline for Revenue Bill Transmittal

HB 206 Introduced by Harris *LC0535 Drafter: McClure*

Bonus Payment for Teachers Who Earn Doctorate

11/17 Fiscal Note Needed
1/08 Introduced
1/08 Referred to Appropriations
1/18 Hearing
1/26 Tabled in Committee
3/24 Missed Deadline for Appropriation Bill Transmittal

HB 207 Introduced by Harris *LC0734 Drafter: MacMaster*

Require Proof of Insurance for Vehicle Registration

1/08 Introduced
1/08 Referred to Transportation
1/08 Fiscal Note Requested
1/15 Fiscal Note Received
1/17 Fiscal Note Printed
1/24 Hearing
1/31 Tabled in Committee
2/23 Missed Deadline for General Bill Transmittal

HB 208 Introduced by Harris, et al. *LC0541 Drafter: MacMaster*

Revise Contempt of Court Laws

| | | | |
|---|---|---|---|
| 1/08 | Introduced | | |
| 1/08 | Referred to Judiciary | | |
| 1/16 | Hearing | | |
| 1/23 | Committee Executive Action--Bill Passed as Amended | 19 | 0 |
| 1/24 | Committee Report--Bill Passed as Amended | | |
| 1/29 | 2nd Reading Passed | 100 | 0 |
| 1/30 | 3rd Reading Passed | 100 | 0 |
| | Transmitted to Senate | | |
| 1/31 | Referred to Judiciary | | |
| 3/01 | Hearing | | |
| 3/23 | Committee Executive Action--Bill Concurred as Amended | 8 | 0 |
| 3/23 | Committee Report--Bill Concurred as Amended | | |
| 3/27 | 2nd Reading Concurred on Voice Vote | 48 | 0 |

| | | | |
|---|---|---|---|
| 3/28 | 3rd Reading Concurred | 48 | 0 |
| | Returned to House with Amendments | | |
| 4/09 | 2nd Reading Senate Amendments Not Concurred | 100 | 0 |
| 4/09 | Free Conference Committee Appointed | | |
| 4/10 | Free Conference Committee Appointed | | |
| 4/17 | Hearing | | |
| 4/18 | Free Conference Committee Report Received | | |
| 4/18 | Free Conference Committee Report Received | | |
| 4/19 | 2nd Reading Free Conference Committee Report Adopted on Voice Vote | 50 | 0 |
| 4/19 | 2nd Reading Free Conference Committee Report Adopted | 99 | 0 |
| 4/20 | 3rd Reading Free Conference Committee Report Adopted | 50 | 0 |
| 4/20 | 3rd Reading Free Conference Committee Report Adopted | 100 | 0 |
| 4/20 | Sent to Enrolling | | |
| 4/21 | Returned from Enrolling | | |
| 4/21 | Signed by Speaker | | |
| 4/21 | Signed by President | | |
| 4/23 | Transmitted to Governor | | |
| 5/01 | Signed by Governor | | |
| 5/01 | Chapter Number Assigned | | |
| | Chapter Number 496 | | |
| | Effective Date: 10/01/2001 - All Sections | | |

HB 209 Introduced by Harris, et al. *LC0536 Drafter: Mitchell*

Revise Remedial Action upon Release of Hazardous Substance Laws

| | | | |
|---|---|---|---|
| 1/08 | Introduced | | |
| 1/08 | Referred to Natural Resources | | |
| 1/08 | Fiscal Note Requested | | |
| 1/15 | Fiscal Note Received | | |
| 1/17 | Fiscal Note Printed | | |
| 1/26 | Hearing | | |
| 2/08 | Committee Executive Action--Bill Passed as Amended | 12 | 8 |
| 2/09 | Committee Report--Bill Passed as Amended | | |
| 2/14 | Revised Fiscal Note Requested | | |
| 2/19 | Revised Fiscal Note Received | | |
| 2/21 | 2nd Reading Passed | 56 | 43 |
| 2/22 | 3rd Reading Passed | 57 | 43 |
| | Transmitted to Senate | | |
| 2/28 | Referred to Natural Resources | | |
| 3/19 | Hearing | | |
| 3/27 | Tabled in Committee | | |
| | Died in Standing Committee | | |

HB 210 Introduced by Ripley, et al. *LC1214 Drafter: Lee Evans*

Revise Determination of Irrigation District Commissioner Compensation

| | | | |
|---|---|---|---|
| 12/08 | Fiscal Note Needed | | |
| 1/08 | Introduced | | |
| 1/08 | Referred to Local Government | | |
| 1/08 | Fiscal Note Requested | | |
| 1/13 | Fiscal Note Received | | |
| 1/15 | Fiscal Note Printed | | |
| 1/30 | Hearing | | |
| 2/01 | Committee Executive Action--Bill Passed as Amended | 17 | 0 |
| 2/01 | Committee Report--Bill Passed as Amended | | |
| 2/03 | 2nd Reading Passed | 75 | 24 |
| 2/05 | 3rd Reading Passed | 73 | 24 |

House BILL NO. 208

INTRODUCED BY CHRISTOPHER HARRIS
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CONTEMPT OF COURT PROCEDURE; CLARIFYING THE MEANING OF CIVIL AND CRIMINAL CONTEMPT; PROVIDING FOR DUE PROCESS IN CONTEMPT PROCEEDINGS AS REQUIRED BY MONTANA SUPREME COURT OPINIONS; AMENDING SECTIONS 3-1-501, 3-1-511, 3-1-513, 3-1-518, 3-1-520, 3-10-402, AND 3-11-303, MCA; AND REPEALING SECTIONS 3-1-519, 3-10-403, AND 3-10-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 3-1-501, MCA, is amended to read:

**"3-1-501. What acts or omissions are contempts -- civil and criminal contempt.** (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as ~~such~~ that individual without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the ~~same~~ communication to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

(3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

(4) A person may be found guilty of and penalized for criminal contempt only under 45-7-309. Proof beyond a reasonable doubt is required, and the procedures provided in Title 46 apply."

**Section 2.** Section 3-1-511, MCA, is amended to read:

**"3-1-511. Procedure -- contempt committed in ~~the~~ presence of ~~the~~ court.** When a contempt is committed in the immediate view and presence of the court or judge at chambers~~,~~ and the contemptuous conduct requires immediate action in order to protect the judicial institution and vindicate the authority of the court, it may be punished summarily~~,~~. ~~for which an~~ An order must be made reciting the facts ~~as occurring~~ that occurred in ~~such~~ the judge's immediate view and presence and adjudging that the person proceeded against is ~~thereby~~ guilty of a contempt and that ~~he~~ the person must be punished as ~~therein~~ prescribed in the order. An order may not be issued unless the person proceeded against has been

informed of the contempt and given an opportunity to defend or explain the person's conduct. A person may not be adjudged guilty of and penalized for criminal contempt under this section."

**Section 3.** Section 3-1-513, MCA, is amended to read:

**"3-1-513. Warrant ~~of attachment or commitment~~ -- statement of charge.** When the contempt is not committed in the immediate view and presence of the court or judge, a warrant ~~of attachment~~ may be issued to bring the person charged to the court to answer ~~or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause~~ the charge. The warrant must be accompanied by an adequate and specific statement of the charge. The answer to the charge must be followed by a hearing under 3-1-518."

**Section 4.** Section 3-1-518, MCA, is amended to read:

**"3-1-518. Hearing on contempt not committed in immediate view and presence of court or judge at chambers.** (1) When ~~the~~ a person arrested for a contempt not committed in the immediate view and presence of the court or judge at chambers has been brought up or appeared, the court or judge ~~must~~ shall proceed to investigate the charge, ~~must hear~~ shall schedule and hold a hearing on any answer ~~which~~ that the person arrested may make to the ~~same~~ charge, and may examine witnesses for or against ~~him~~ the person, for which an adjournment may be had from time to time, if necessary. The judge investigating the charge and scheduling and presiding over the hearing may not be the judge against whom the contempt was allegedly committed.

(2) The charged person must be given a reasonable opportunity to obtain counsel and prepare a defense or explanation prior to the hearing. The charged person may testify and call witnesses at the hearing."

**Section 5.** Section 3-1-520, MCA, is amended to read:

**"3-1-520. ~~Imprisonment~~ Penalty to compel performance.** When the sanction imposed for a contempt ~~consists in the omission to~~ seeks to compel the contemnor to perform an act ~~which~~ that is ~~yet~~ in the power of the ~~person~~ contemnor to perform, ~~he~~ the contemnor may be ~~imprisoned~~ incarcerated, subjected to a fine in an amount not to exceed $500, or both, until ~~he shall have performed it~~ the



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contemnor has performed the act. ~~In that case, the~~ The act must be specified in the warrant of commitment."

**Section 6.** Section 3-10-402, MCA, is amended to read:

**"3-10-402. Proceedings ~~-- contempt committed in presence of court~~.** When a contempt is committed, whether or not it is in the immediate view and presence of the justice, ~~it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed~~ the procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

**Section 7.** Section 3-11-303, MCA, is amended to read:

**"3-11-303. Contempts a city judge may punish for --procedure.** (1) A city judge may punish for contempt persons guilty of only the following acts ~~and no other~~:

~~(1)~~(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

~~(2)~~(b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by ~~him~~ the judge tending to interrupt the due course of a trial or other judicial proceeding;

~~(3)~~(c) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

~~(4)~~(d) disobedience to a subpoena ~~duly~~ served or refusal to be sworn or to answer as a witness;

~~(5)~~(e) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(2) The procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

NEW SECTION. **Section 8. Repealer.** Sections 3-1-519, 3-10-403, and 3-10-404, MCA, are repealed.

- END -

**HB 195** SPONSOR: Wolery, Merlin SHORT TITLE: Revise transferable crime under youth court act -- dangerous drug
REFERRED ON: 01/06/2001 HEARD ON: 01/18/2001
EXECUTIVE ACTION: 01/18/2001 - Bill Passed as Amended -- VOTE: 15 - 4
FINAL DISPOSITION: 04/16/2001 Chapter Number Assigned

**HB 196** SPONSOR: Lee, Michelle SHORT TITLE: Clarify corrections funding for inmates detained in local detention centers
REFERRED ON: 01/06/2001 HEARD ON: 01/11/2001
EXECUTIVE ACTION: 01/24/2001 - Bill Passed as Amended -- VOTE: 11 - 9
FINAL DISPOSITION: 03/24/2001 (H) Missed Deadline for Appropriation Bill Transmitt

**HB 200** SPONSOR: Davies, Bob SHORT TITLE: Legislative override of supreme court decisions -- constitutional amendment
REFERRED ON: 01/06/2001 HEARD ON: 02/06/2001
TABLED ON: 02/08/2001
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal

**HB 201** SPONSOR: Davies, Bob SHORT TITLE: Create offense of theft by embezzlement
REFERRED ON: 01/06/2001 HEARD ON: 02/02/2001
EXECUTIVE ACTION: 02/06/2001 - Bill Passed as Amended -- VOTE: 13 - 7
FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

**HB 202** SPONSOR: Davies, Bob SHORT TITLE: Revise law on public employees carrying concealed weapons
REFERRED ON: 01/06/2001 HEARD ON: 02/02/2001
TABLED ON: 02/02/2001
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal

**HB 203** SPONSOR: Davies, Bob SHORT TITLE: Limit punitive damages
REFERRED ON: 01/06/2001 HEARD ON: 01/26/2001
TABLED ON: 01/26/2001
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal

**HB 208** SPONSOR: Harris, Christopher SHORT TITLE: Revise contempt of court laws
REFERRED ON: 01/08/2001 HEARD ON: 01/16/2001
EXECUTIVE ACTION: 01/23/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES**
**57th LEGISLATURE - REGULAR SESSION**
**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 16, 2001 at 8:00 A.M., in Room 137 Capitol.

**ROLL CALL**

**Members Present:**
Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

**Members Excused**: None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted: **HB 213 - 1-08-01**
**HB 89 - 1-08-01**
**HB 208 - 1-12-01**

**Curtiss, Holden, Peterson, Rice, Wolery, Younkin and Shockley voting no.**

**Motion/Vote**: **REP. LASZLOFFY** moved that **HB 54 BE TABLED. #7. Motion carried 15-4 with Reps. Gallus, Harris, Mangan and Newman voting no.**

***{Tape : 4; Side : B; Approx. Time Counter : 8.6 - 24.7}***

**HEARING ON HB 208**

**Sponsor**: **Rep. Christopher Harris, HD 30** said this Bill is a clarification of the law and is not intended to create new law. The current law will probably stumble along O.K. because all that would be required would be for judgements dealing with a contempt of court issue, is to look up the Supreme Court case. There are several Supreme Court Cases such as **EXHIBIT(12) EXHIBIT(13).**

Here is what the Supreme Court essentially says in these cases. First that there is a distinction between criminal contempt and civil contempt. If the contemnor, has in his or her hand, the keys to get out of contempt, then it is a civil case. If on the other hand, the purpose of the contempt, as handed down by the judge, is to punish, that is a criminal contempt. So this distinction is clear from the case law, not clear in the current statute, and is specifically set forth in the Bill.

**Proponents**: None

**Opponents**: None

**Questions from Committee Members and Responses**: **Reps. Younkin, Noennig to Rep. Harris concerning contempt of court requirements.**

**Closing by Sponsor**: **Rep. Harris closed the Hearing on HB 208.**

**EXHIBIT(14)** given to Secretary for HB 213.

EXHIBIT 12
DATE 1-14-01
HB 208

# LISA B. KAUFFMAN, Esq.,
Relator,
v.
# MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY, THE HONORABLE JEFFREY LANGTON,
Presiding Judge,
Respondent.

No. 98-277.
Submitted on Briefs June 16, 1998.
Decided September 29, 1998.
1998 MT 239.
55 St.Rep. 1001.
291 Mont. 122.
966 P.2d 715.

## CONTEMPT — CONSTITUTIONAL LAW

1. **Contempt**
Supreme Court's standard for review of contempt orders, pursuant to a writ of certiorari, is first to determine whether the court which found contempt acted within its jurisdiction, and second, to determine whether there is evidence to support the finding of contempt.

2. **Contempt**
If the court's purpose is to punish the contemnor for a specific act done and to vindicate the authority of the court, the contempt is "criminal contempt," while a sanction which attempts to force the violator's compliance with a court order is "civil contempt."
See publication Words and Phrases for other judicial constructions and definitions.

3. **Contempt**
"Direct contempt" is an open insult committed in the presence of the court, whereas an "indirect contempt" is an act done not in the presence of the court, but at a distance, and that tends to belittle or degrade the court.
See publication Words and Phrases for other judicial constructions and definitions.

4. **Contempt**
Summary contempt proceedings must only be used in instances in which the contemptuous conduct requires immediate action in order to vindicate the authority of the court. MCA 3-1-511.

**5. Contempt**

Direct contempt includes acts or statements made in open court or within the purview of the presiding judge, and the filing of pleadings placed before the court.

**6. Constitutional Law**

**Contempt**

Regardless of the type of contempt committed, direct or indirect, a court's primary consideration before subjecting a contemnor to summary contempt proceedings must be whether immediate corrective steps are necessary to restore order, maintain dignity and authority of the court, and to prevent delay; otherwise, a contemnor is entitled to the full due process hearing traditionally associated with indirect contempt, a finding, in instances in which criminal punishment is a consequence, that the evidence establishes the contemnor's guilt beyond a reasonable doubt, and a hearing in front of an unbiased court other than that in which the misconduct occurred. U.S.C.A. Const.Amend. 14; MCA 3-1-511.

**7. Contempt**

District court may subject a contemnor to summary contempt proceedings in those circumstances in which the misconduct threatens the court's immediate ability to conduct its proceedings and instant action is necessary. MCA 3-1-511.

**8. Constitutional Law**

**Contempt**

In cases in which it is not necessary for a court to take instant action, a contemnor is entitled to full due process, which includes a hearing before a neutral judge, during which the contemnor is advised of the charges against him or her and has a reasonable opportunity to meet them by way of defense or explanation, has the right to be represented by counsel, has a chance to testify and call other witnesses on his behalf, and in instances in which criminal punishment is a consequence, has the right to a finding of guilt beyond a reasonable doubt. U.S.C.A. Const.Amend. 14.

**9. Constitutional Law**

**Contempt**

There was no urgency or immediacy to question of whether attorney's conduct was contemptuous in connection with attorney's failure to appear at hearing in a proceeding to terminate mother's parental rights, and thus, summary contempt proceeding was not necessary and it violated attorney's due process right; the parental rights hearing at which attorney had failed to appear had already transpired with substitute counsel by the time the contempt hearing was held, and judge did not determine that attorney had filed allegedly misleading documents with the court until after the contempt hearing. U.S.C.A. Const.Amend. 14; MCA 3-1-511.

ORIGINAL PROCEEDING.

See C.J.S. Constitutional Law § 1425.

In a summary proceeding, the District Court found attorney in direct contempt in connection with attorney's failure to appear at a hearing in a proceeding to terminate mother's parental rights, and attorney was ordered to serve 24 hours in jail. Attorney's petition for writ of certiorari was granted. The Supreme Court, Justice Regnier, held that there was no urgency or immediacy to question of whether attorney's conduct was contemptuous, and thus, summary contempt proceeding was not necessary and it violated attorney's due process rights.

Reversed and remanded.

For Relator: **Lisa B. Kauffman**, Attorney at Law, Missoula.

For Respondent: **The Honorable Jeffrey Langton**, District Court Judge, Hamilton.

JUSTICE REGNIER delivered the opinion of the Court.

¶1 On April 15, 1998, District Court Judge Jeffery H. Langton of the Twenty-First Judicial District in Ravalli County, found petitioner, Lisa B. Kauffman, Esq., in contempt of court. Judge Langton ordered Kauffman to serve twenty-four hours in the Ravalli County Jail and fined her the sum of $500.

¶2 Kauffman immediately filed a petition for writ of certiorari with this Court, and on April 16, 1998, we stayed the execution of the contempt order and set forth a briefing schedule. After briefs were submitted, on May 14, 1998, this Court dismissed the petition on procedural grounds without prejudice. Kauffman then refiled her petition and, after another procedural challenge by Judge Langton, we decided to address the petition on the merits.

¶3 We now consider Kauffman's application for writ of certiorari and, at the request of Judge Langton, consider his response filed in Case No. 98-200 as his response in this action. We grant the petition for a writ of certiorari and reverse.

¶4 The issues on appeal are:

¶5 1. Did the District Court have jurisdiction to issue the contempt order?

¶6 2. Is there substantial evidence to support the contempt order?

¶7 Because our resolution of Issue One is dispositive, we decline to address Issue Two.

## FACTUAL BACKGROUND

¶8 In October 1997, Lisa B. Kauffman, Esq., applied for a scholarship to attend a legal seminar to be held in Puerto Rico commencing on February 4, 1998. The next month, on November 14, 1997, Judge Langton appointed Kauffman to represent a mother in a proceeding to terminate the mother's parental rights. Shortly thereafter Judge Langton set the matter for hearing on February 9 and 10, 1998.

¶9 Kauffman made contact with the father's counsel in December 1997, seeking information about the whereabouts of the mother. Kauffman then left for a three-week vacation to Chicago, returning on January 6, 1998. Upon her return, she learned that she had been granted the scholarship for the seminar in Puerto Rico. Kauffman then focused on a criminal jury trial scheduled for January 12, 1998.

¶10 Upon completion of the jury trial, Kauffman began to address her obligations in the court appointment. On January 27, 1998, Kauffman spoke with attorney Michael Hayes who was representing the State in the termination proceeding. He gave Kauffman information he had regarding the mother at that time. Also on January 27, 1998, Kauffman called Bobbi Baker, the social worker involved, and Patricia Sanders, the guardian ad litem. Baker provided the information she had regarding the mother and, later that day, contacted Kauffman and gave her the mother's new telephone number.

¶11 Kauffman's initial contact with her client occurred on January 29, 1998. Also on that date Kauffman filed a motion to continue. The motion recited that up until that date Kauffman had attempted, without success, to locate her client. The District Court denied the motion.

¶12 Kauffman next contacted attorney Kirk Krutilla to substitute for her so she could attend the Puerto Rico conference. Krutilla obtained Kauffman's file on the matter on February 2, 1998. Kauffman departed for Puerto Rico on February 2, 1998, without notice to the court or formally seeking a substitution of counsel. The termination proceeding commenced as scheduled on February 9, 1998, with Krutilla representing the mother.

¶13 Apparently disturbed by Kauffman's actions in connection with the proceeding, on March 27, 1998, by certified letter, Judge Langton directed Kauffman to appear pursuant to a contempt citation for hearing. Judge Langton also directed other parties to the proceeding to file affidavits concerning Kauffman's representation of the mother.

¶14 Judge Langton held a contempt hearing and determined that Kauffman's version of the events conflicted with that of other witnesses who provided testimony. Specifically, Judge Langton found that Kauffman's testimony that she had advised the mother about the substitution of counsel on January 29, 1998, and that she had already contacted Krutilla about taking over the case, conflicted with Krutilla's billing statement and testimony at the hearing. Judge Langton further noted that Kauffman's testimony conflicted with documents which she filed regarding the dates when she received a contact number for her client, when she first spoke with her client and when she filed her motion to continue. Judge Langton also noted that a significant time elapsed between the date she affirmatively knew of her scheduling conflict and the date she filed her motion to continue.

¶15 Judge Langton found that Kauffman's actions were in direct violation of his order in which he appointed her to represent the mother in the termination proceedings. Judge Langton further found that Kauffman failed to display reasonable diligence and promptness in her representation of her client in violation of Rules 1.3 and 3.2 of the Rules of Professional Conduct, and made misleading statements to the District Court in violation of Rule 3.3. Finally, Judge Langton found that Kauffman engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(c) and (d). As a result of these infractions, Judge Langton determined that Kauffman was in direct contempt of court as provided by § 3-1-501, MCA.

## DISCUSSION

¶16 [1] Our established standard for review of contempt orders, pursuant to a writ of certiorari, is first to determine whether the court which found contempt acted within its jurisdiction and, second, to determine whether there is evidence to support the finding of contempt. *See Matter of Graveley* (1980), 188 Mont. 546, 555, 614 P.2d 1033, 1038-39.

¶17 [2] Kauffman first argues that Judge Langton did not have jurisdiction to issue the contempt order. Kauffman correctly points out that if the court's purpose is to punish the contemnor for a specific act done and to vindicate the authority of the court, the contempt is criminal. *See Gompers v. Buck's Stove & Range Co.* (1911), 221 U.S. 418, 441, 31 S. Ct. 492, 498, 55 L. Ed. 797, 806. This is in contrast to a sanction which attempts to force the violator's compliance with a court order, which is civil contempt. It is the ability to end the imprisonment

that is the distinguishing factor and why it is often said that in a civil contempt case one carries the keys to the jailhouse in his own pocket. *See Gompers*, 221 U.S. at 442, 31 S. Ct. at 498, 55 L. Ed. at 806. Kauffman maintains that since her conduct can only be characterized as criminal contempt, Judge Langton was without jurisdiction to sanction her to jail without being prosecuted under Montana's criminal contempt statute, § 45-7-309, MCA.

¶18 Judge Langton responds that he was within his jurisdiction to issue the order without proceeding under the criminal contempt statute. He points out that summary punishment of direct contempt is a traditional and essential power of the court and is provided for by statute. Sections 3-1-511 and -519, MCA. Judge Langton provided Kauffman an opportunity for allocution which is required in direct contempt proceedings. *See Malee v. District Court* (1996), 275 Mont. 72, 911 P.2d 831.

¶19 [3] Kauffman raises another jurisdictional argument. She contends that Judge Langton was without jurisdiction to preside over charges which can only be described as indirect contempt. Direct contempt is an open insult committed in the presence of the court, whereas an indirect contempt is an act done not in the presence of the court, but at a distance that tends to belittle or degrade the court. *See Malee*, 275 Mont. at 75-76, 911 P.2d at 832-33. The distinction is critical to a determination of the proper procedures which the court must follow.

¶20 Kauffman argues that her conduct, which Judge Langton deemed to be contemptuous, was indirect or constructive. She argues that because she never appeared before Judge Langton until her order to show cause hearing, the matter is an indirect or constructive contempt. Kauffman further argues that for indirect contempt, the proper procedures which must be followed are spelled out in § 3-1-512, MCA, and that Judge Langton acted without authority when he required her to appear before him by certified letter. Therefore, she urges that the matter be dismissed for lack of jurisdiction.

¶21 Judge Langton states that the contempt in this particular case was direct. Section 3-1-511, MCA. According to Judge Langton, the direct contempt included oral statements made to the court, and written documents filed with the court, both of which the Judge personally observed. He argues his authority for the direct contempt is found in § 3-1-501(c), (d), and (e), MCA. He states that as District

Judge he may summarily punish for direct contempt and, in this case, he was within his jurisdiction to do so.

¶22 Finally, Kauffman argues that should we address the merits of the contempt order, there was insufficient evidence to support it. Kauffman maintains that under § 3-1-501, MCA, Judge Langton apparently proceeded under subsection (c) or (e). She argues that there was a one-sentence minute entry which appointed her to represent her client in this case, and there were no orders compelling her personal appearance at any hearings. She further asserts that she secured alternative counsel for her appointed client in the event that her motion to continue was denied. She also points out that under § 37-61-403, MCA, an attorney in an action may be changed at any time by filing a substitution with the client's consent in the minutes with the clerk. She notes that her client had no objection to the substitution.

¶23 Judge Langton responds that Kauffman's affidavit filed on February 9, 1998, is irreconcilable in several regards to other statements made by Kauffman, including information she provided in her statement of fees, letters to the District Court, and her motion for continuance. He argues that this is further exacerbated by her oral testimony given at the contempt hearing. Judge Langton points out that her affidavit represents that she had diligently tried to locate the client; however, at the hearing it was established, through the witnesses and her own testimony, that she did not attempt to locate her client until two weeks before the scheduled hearing. In summary, Judge Langton argues that this was clearly direct contempt and that he sentenced her within his jurisdiction and authority as allowed by the statutes.

¶24 [4] We conclude that Kauffman's conduct may have satisfied the elements of § 3-1-501, MCA, and, therefore, that it is within Judge Langton's jurisdiction, pursuant to § 3-1-519, MCA, to issue the contempt order in question. However, as we more fully explain below, certain contempt proceedings pursuant to § 3-1-501, MCA, must provide for more due process protection for the contemnor than is provided in a summary contempt proceeding. Summary contempt proceedings must only be used in instances in which the contemptuous conduct requires immediate action in order to vindicate the authority of the court.

¶25 [5] As we stated above, the distinction between direct and constructive contempt is critical when determining the due process afforded to the contemnor. Actually, the alleged conduct in question in

this proceeding is probably best described as a mixture of both direct and indirect. However, Judge Langton was certainly justified, based on our case law, to characterize the alleged conduct in this instance as direct contempt. Direct contempt includes acts or statements made in open court or within the purview of the presiding judge. *See Malee,* 275 Mont. at 76, 911 P.2d at 834. We have previously expanded the definition of direct contempt to include the filing of pleadings placed before the court. *See Malee,* 275 Mont. at 76, 911 P.2d at 834. In the case before him, Judge Langton based his contempt order on written documents placed with the court, as well as oral testimony at the contempt hearing.

¶26 Regardless of how we classify the conduct at issue, this Court has always been vigilant to insure that due process is properly accorded to the person charged. We have held that in constructive or indirect contempt proceedings, the following due process requirements must be followed:

> That one charged with contempt of court be advised of the charges against him, have reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.

*Malee,* 275 Mont. at 76, 911 P.2d at 833 (citing *In re Oliver* (1948), 333 U.S. 257, 275, 68 S. Ct. 499, 508, 92 L. Ed. 682, 695). Additionally, we have held that a court must follow the affidavit or statement of facts procedure set forth in § 3-1-512, MCA.

¶27 In cases of direct contempt, on the other hand, we have not afforded full due process. We have held that although a contemnor is not entitled to the full due process of notice of charges, opportunity to be heard, and an opportunity to present his or her case in front of an unbiased tribunal, he or she is entitled to a right of allocution or an opportunity to be heard. *See Malee,* 275 Mont. at 76, 911 P.2d at 833. Pursuant to § 3-1-511, MCA, direct contempt may be summarily punished; however, according to our reasoning in *Malee,* in all summary contempt proceedings "the contemnor must be granted an opportunity to explain or excuse himself. Such opportunity allows the individual to potentially purge himself or show no contempt was intended." *Malee,* 275 Mont. at 78, 911 P.2d at 834 (citing *State ex rel. Smith v. District Court* (1984), 210 Mont. 344, 347, 677 P.2d 589, 591). Therefore, we held that in summary contempt proceedings the contemnor does not have a right to a "full-blown" trial of his or her

contempt charges, but does have a right to notice and at least a brief opportunity to defend or explain his or her actions. *Malee,* 275 Mont. at 78-80, 911 P.2d at 835. This we have described as a right of allocution. *See Malee,* 275 Mont. at 78-79, 911 P.2d at 835.

¶28 Because this Court has expanded the definition of direct contempt from being only that misconduct which occurs in open court, to language found in pleadings, we have created a category of direct contempt that does not necessarily require urgent and immediate action in order to preserve and restore order, dignity, and the authority of the court. *See Malee,* 275 Mont. 72, 911 P.2d 831. Urgency considerations generally do not exist in this species of direct contempt. The need to sacrifice due process concerns for the practical need to maintain an orderly court is not present. Therefore, although we affirm this expansion of our definition of direct contempt, we believe it is necessary to clarify the situations in which direct contempt may give rise to summary contempt proceedings, and the situations in which direct contempt must be addressed by proceedings that respect the full due process rights of the accused.

¶29 In *Pounders v. Watson* (1997), 521 U.S. 982, 117 S. Ct. 2359, 2361, 138 L. Ed. 2d 976, 982, the United States Supreme Court addressed the summary contempt exception to the normal due process requirements of a hearing, counsel, and the opportunity to call witnesses. It pointed out that summary contempt "includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the elements of the misconduct are under the eye of the court, are actually observed by the court, and where *immediate punishment is essential to prevent 'demoralization of the court's authority' before the public.*" *Pounders,* 521 U.S. 982, 117 S. Ct. at 2361, 138 L. Ed. 2d at 982 (quoting *In re Oliver* (1948), 333 U.S. 257, 275, 68 S. Ct. 499, 509, 92 L. Ed. 682, 695) (emphasis added). The Supreme Court has stressed the importance of confining summary contempt orders to only that misconduct which requires immediate action to protect the judicial institution itself. *See Harris v. United States* (1965), 382 U.S. 162, 167, 86 S. Ct. 352, 356, 15 L. Ed. 2d 240, 243-44. This usually occurs in proceedings in the courtroom during which the "affront to the court's dignity is more widely observed, justifying summary vindication." 521 U.S. 982, *Pounders,* 117 S. Ct. at 2362, 138 L. Ed. 2d at 982. A limitation of summary contempt proceedings to instances in which the misconduct threatens the court's immediate ability to conduct its proceedings is in line with the policy

consideration that contempt power is subject to abuse, and "only 'the least possible power adequate to the end proposed' should be used in contempt cases." Young v. United States ex rel. Vuitton et Fils S.A. (1987), 481 U.S. 787, 801, 107 S. Ct. 2124, 2134, 95 L. Ed. 2d 740, 754.

¶30 The importance of the due process limitation on the authority of a court to issue a summary contempt order was aptly recognized by Justice Frankfurter in his dissenting opinion in *Sacher v. United States* (1952), 343 U.S. 1, 72 S. Ct. 451, 96 L. Ed. 717:

> Summary punishment of contempt is concededly an exception to the requirements of Due Process. Necessity dictates the departure. Necessity must bound its limits. In this case the course of events to the very end of the trial shows that summary measures were not necessary to enable the trial to go on. Departure from established judicial practice, which makes it unfitting for a judge who is personally involved to sit in his own case, was therefore unwarranted. ...
>
> This, then, was not a situation in which, even though a judge was personally involved as the target of the contemptuous conduct, peremptory action against contemnor was necessary to maintain order and to salvage the proceedings. Where such action is necessary for the decorous continuance of a pending trial, disposition by another judge of a charge of contempt is impracticable. Interruption for a hearing before a separate judge would disrupt the trial and thus achieve the illicit purpose of a contemnor.

*Sacher*, 343 U.S. at 36-37, 39, 72 S. Ct. at 468, 469-470, 96 L. Ed. at 737 (Frankfurter, J., dissenting). We recognized these limits to a court's summary contempt power in *Lilenthal v. District Court* (1982), 200 Mont. 236, 650 P.2d 779, in which we held:

> Unless the act constituting contempt occurs in open court where *immediate punishment is necessary to prevent demoralization of the court's authority*, due process requires:
>
> "... that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation." *In Re Green* (1962), 359 [369] U.S. 689, 691-92, 82 S.Ct. 1114, 1116, 8 L.Ed.2d 198, 200; *Re Oliver* (1948), 333 U.S. 257, 275, 68 S.Ct. 499, 508, 92 L.Ed. 682, 695.

*Lilenthal*, 200 Mont. at 242, 650 P.2d at 782 (emphasis added).

¶31 [6] With these considerations in mind, we conclude that regardless of the type of contempt committed, direct or indirect, a court's primary consideration before subjecting a contemnor to summary contempt proceedings, must be whether immediate corrective steps are necessary to restore order, maintain dignity and authority of the court, and to prevent delay. Otherwise, a contemnor is entitled to the full due process hearing traditionally associated with indirect contempt, a finding, in instances in which criminal punishment is a consequence, that the evidence establishes the contemnor's guilt beyond a reasonable doubt, and a hearing in front of an unbiased court other than that in which the misconduct occurred. *See In re Murchison* (1955), 349 U.S. 133, 136-39, 755 S. Ct. 623, 625-27, 99 L. Ed. 942, 946-48; *State ex rel. Tague v. District Court et al.* (1935), 100 Mont. 383, 388, 47 P.2d 649, 651.

¶32 [7] Accordingly, we conclude that a district court may subject a contemnor to summary contempt proceedings in those circumstances in which the misconduct threatens the court's immediate ability to conduct its proceedings and instant action is necessary. We further recognize that the trial judge must and does have the inherent authority and power to address and summarily punish such conduct. Certainly our decision in this case should not be viewed to diminish this traditional authority. Pursuant to our decision in *Malee*, the contemnor in a summary contempt proceeding maintains his or her right of allocution.

¶33 [8] In cases in which it is not necessary for a court to take instant action, however, a contemnor is entitled to full due process. This includes a hearing before a neutral judge, during which the contemnor is advised of the charges against him or her, has a reasonable opportunity to meet them by way of defense or explanation, has the right to be represented by counsel, has a chance to testify and call other witnesses on his behalf, and, in instances in which criminal punishment is a consequence, a finding of guilt beyond a reasonable doubt.

¶34 [9] The facts of this case bring the immediacy requirement of summary contempt into clear focus. Here the underlying hearing at which Kauffman failed to appear had already transpired with substitute counsel. Likewise, the District Court did not determine that Kauffman had filed the alleged misleading documents until after the hearing. That being the case, there was no urgency or immediacy to the question of whether Kauffman's conduct was contemptuous. The

matter could be handled, as it was, in a subsequent and separate hearing involving the issue of contempt.

¶35 We conclude that because Kauffman's conduct in this case allegedly constitutes contempt that did not necessitate immediate action, a summary contempt proceeding by the same judge was not necessary and violated Kauffman's due process rights. We remand this case for a hearing in front of a different judge in a manner consistent with this opinion.

¶36 The judgment of the District Court is reversed.

CHIEF JUSTICE TURNAGE, JUSTICES GRAY, NELSON, TRIEWEILER, HUNT and LEAPHART concur.

EXHIBIT 13
DATE 1-16-01
HB 208

# ELDON HUFFINE, Petitioner, v. MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY, Respondent.

No. 97-474.
Submitted August 26, 1997.
Decided October 10, 1997.
54 St.Rep. 1065.
285 Mont. 104.
945 P.2d 927.

## CONTEMPT — CONSTITUTIONAL LAW

1. **Contempt**
Classification of contempt as civil or criminal is crucial, particularly where contemnor is sentenced to confinement, because classification determines procedures that district court must follow.

2. **Contempt**
Nothing inherent in contemptuous act or refusal to act classifies that act as civil or criminal; rather, it is character and purpose of punishment which court chooses to impose that serves to distinguish between civil and criminal contempt.

3. **Contempt**
If contempt sanction is singularly designed and intended to force violator's compliance with court's order, the contempt is civil.

4. **Contempt**
If court's purpose in imposing contempt sanction is to punish contemnor for specific act done and to vindicate authority of court, the contempt is criminal.

5. **Contempt**
Because court's intent in imposing a particular contempt sanction may be unclear, it is necessary to look to form of sanction to determine whether it is civil or criminal.

6. **Contempt**
Sentencing contemnor to confinement for a definite period is civil sanction if contemnor may secure his or her release by complying with conditions that are specified by court.

7. **Contempt**
Contemnor's ability to end his or her imprisonment is the distinguishing factor in determining whether imprisonment is for civil or criminal contempt.

8. **Contempt**
When jail sentence is imposed and contemnor is given no opportunity in sentencing order for immediate release by performing act which is within his or her power to accomplish, the contempt is criminal.

9. **Contempt**
Nonattorney's practicing of law without license, through purporting to act on behalf of and as counsel for plaintiff in civil rights action, was contempt. MCA 3-1-501(f), 37-61-210.

10. **Contempt**
Statute providing that contemnor may be fined up to $500 or be imprisoned for up to 5 days, or both, and statute providing that contemnor may be sentenced to imprisonment to compel performance of act, provide exclusive sanctions for contempt and may not be imposed together. MCA 3-1-519, 3-1-520.

11. **Contempt**
Contempt was criminal rather than civil, where District Court sentenced contemnor to 30 days in jail or fine of $500; while sentence purported to be intended to compel performance of affirmative act, there was no affirmative act that contemnor could perform to cure contempt and secure his release from jail or excuse him from paying fine. MCA 3-1-520.

12. **Contempt**
Statute, providing that contemnor may be sentenced to imprisonment to compel performance of act, envisions sentence of imprisonment singularly designed and intended to force violator's compliance with court's order. MCA 3-1-520.

13. **Constitutional Law**
**Contempt**
District Court could not impose punitive, criminal contempt sentence without bringing charges under criminal contempt statute and affording contemnor due process. U.S.C.A. Const.Amend. 14; MCA 45-7-309.

14. **Contempt**
Power to sentence contemnor to confinement, thus depriving him or her of his or her liberty, is one that must be exercised with utmost caution.

15. **Contempt**
To properly characterize contempt proceeding as criminal or civil, district court first must determine whether its purpose in imposing sanction is to compel performance or to punish.

16. **Contempt**
If court's design in imposing contempt sanction is to impose coercive sentence of confinement, it may proceed under civil contempt provision, by clearly stating in sentencing order: (1) an act within power of contemnor to perform and (2) performance of which will secure his or her release. MCA 3-1-519.

17. **Contempt**
Only where criminal contempt charges are brought and appropriate procedures are followed may contemnor be sentenced to confinement for a definite period. MCA 45-7-309.

**Original Proceeding: Habeas Corpus.**

**See C.J.S. Contempt § 1.**

Petitioner filed writ of habeas corpus challenging District Court's finding that he was in contempt for practicing law without a license. The Supreme Court, Justice Leaphart, held that: (1) defendant's practicing of law without license, through purporting to act on behalf of and as counsel for plaintiff in civil rights action, was contempt; (2) defendant's contempt was criminal, where he was sentenced to 30 days in jail or fine of $500; and (3) District Court could not impose criminal contempt sentence without bringing charges under criminal contempt statute and affording contemnor due process.

Petition granted.

For Petitioner: **Eldon Huffine**, Pro Se, Livingston.

For Respondent: **Hon. Joseph P. Mazurek**, Attorney General, Helena; **Hon. Frank M. Davis**, District Court Judge, Dillon; **Thomas G. Bowe**, Assistant Attorney General, Helena; **Tara DePuy**, Park County Attorney, Livingston.

For Amicus: **W. D. Hutchison**, Agency Legal Services Bureau, Department of Justice, Helena.

JUSTICE LEAPHART delivered the Opinion of the Court.

On August 14, 1997, petitioner Eldon Huffine (Huffine) filed herein a *pro se* petition for writ of habeas corpus, together with a writ of error, arguing that his sentence for contempt violates Montana and constitutional law. On August 26, 1997, this Court granted Huffine's

petition for writ of habeas corpus and ordered his immediate release from confinement in the Park County jail. We issue this opinion to address whether the District Court erred in sentencing Huffine to a term of thirty days in jail for practicing law without a license.

## Factual and Procedural Background

Huffine's contempt charge arises out of events surrounding *State of Montana ex rel. Department of Health and Environmental Sciences (DHES) v. Eugene Brue*, an action filed in the Montana Sixth Judicial District Court, Park County. On January 5, 1995, the State filed a complaint and application for an injunction in the District Court alleging that Mr. Brue was operating an unlicensed and unshielded motor vehicle wrecking facility in Park County in violation of Montana law and DHES regulations. Mr. Brue filed a counterclaim against approximately thirty individuals, including several Justices of this Court, seeking not less than $1.5 million in damages for violations of his civil rights. Mr. Brue also named the Honorable Wm. Nels Swandal, the District Court judge who was presiding over the action, as a counterclaim defendant. Judge Swandal recused himself, and the Honorable Frank M. Davis assumed jurisdiction.

On March 14, 1995, Huffine filed in the District Court a notice of appearance as counsel for Mr. Brue and brief in support of the pleadings. Huffine advised the court that it should direct all further correspondence in the matter to him, "a private citizen having been designated to act as counsel by and for the Defendant Eugene Brue." The State filed a motion to strike the notice of appearance, arguing that Mr. Brue "is now represented by a person who is not a licensed attorney, yet who holds himself out as counsel for Defendant."

In its omnibus findings, opinion, and order issued April 26, 1995, the District Court found that Huffine is not a licensed attorney and that by filing a notice of appearance as counsel for Brue, he was practicing law without a license. The court then held that Huffine was guilty of contempt under § 37-61-210, MCA (providing that practicing law without a license is contempt of court) and ordered him to appear before the court to show cause why sanctions should not be imposed. Huffine failed to appear, and in an order filed May 23, 1995, the District Court sentenced Huffine to a term of thirty days in the Park County Jail, to be suspended upon his paying a $500 fine within ten days. The District Court also issued a bench warrant for Huffine's arrest.

On August 10, 1997, Huffine was arrested and confined to the Park County Jail. On August 14, 1997, Huffine filed petitions for a writ of habeas corpus and a writ of error in this Court, asserting that 1) Judge Frank M. Davis of the Montana Sixth Judicial District Court, Park County, had been disqualified from proceeding over the matter; 2) Huffine was denied a trial by jury in violation of his constitutional rights; and 3) the court had no jurisdiction to sentence Huffine to thirty days in jail. In its response to this Court, the District Court states that under §§ 3-1-519 and -520, MCA, it had authority to sentence Huffine to imprisonment to compel his performance of its order that he cease practicing law without a license.

Discussion

[1] Determining whether a particular contempt proceeding is criminal or civil can be difficult, as contempts are "neither wholly civil nor altogether criminal." *Gompers v. Buck's Stove & Range Co.* (1911), 221 U.S. 418, 441, 31 S.Ct. 492, 498, 55 L.Ed. 797, 806. Still, the classification of contempt is crucial, particularly where the contemnor is sentenced to confinement, because the classification determines the procedures that the district court must follow. *See Crozer-Chester Medical Center v. Moran* (Penn. 1989), 560 A.2d 133, 136 (citing Dobbs, HANDBOOK ON THE LAW OF REMEDIES § 2.9 (1973)). Therefore, to determine whether the District Court properly sanctioned Huffine for his contempt, this Court must first determine whether the contempt was criminal or civil.

[2-4] There is "nothing inherent in a contemptuous act or refusal to act which classifies that act as civil or criminal." *Crozer-Chester*, 560 A.2d at 136 (citing *In re Martorano* (1975), 346 A.2d 22, 27). Rather, it is the character and purpose of the punishment which the court chooses to impose that serves to distinguish between civil and criminal contempt. *Hicks ex rel. Feiock v. Feiock* (1988), 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721; *Gompers*, 221 U.S. at 441, 31 S.Ct. at 498. If the sanction is "singularly designed and intended to force the violator's compliance with the court's order," the contempt is properly classified as civil. *Harber v. Shaffer* (Okla. 1988), 755 P.2d 640, 641; *Gompers*, 221 U.S. at 441, 31 S.Ct. at 498. However, if the court's purpose is to punish the contemnor for a specific act done and to vindicate the authority of the court, the contempt is criminal. *Gompers*, 221 U.S. at 441, 31 S.Ct. at 498.

[5-8] Because a court's intent in imposing a particular sanction may be unclear, it is necessary to look to the form of the sanction to

determine the purpose for which it was imposed. *Gompers*, 221 U.S. at 441, 31 S.Ct. at 498. A sentence of confinement for a definite period is traditionally thought of as criminal; however, it is civil if the contemnor may secure his or her release by complying with conditions that are specified by the court. *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30. It is this ability to end the imprisonment that is the distinguishing factor and why it is often said that in a civil contempt, one carries the keys to the jailhouse in his own pocket. *Gompers*, 221 U.S. at 442, 31 S.Ct. at 498; *Crozer-Chester*, 560 A.2d at 137. On the other hand, when "a jail sentence is imposed and the contemnor is given no opportunity in the sentencing order for immediate release by [performing] an act which is within his power to accomplish," the contempt is criminal. *Hendershot v. Hendershot* (W.Va. 1980), 263 S.E.2d 90, 93.

[9] In this case, the District Court found Huffine in contempt for purporting to act on behalf of and as counsel for Mr. Brue. We agree that Huffine's practicing law without a license is contempt under § 37-61-210, MCA. *See also* § 3-1-501(f), MCA (stating that "assuming to be an officer, attorney, or counsel of a court and acting as such without authority" is contempt). Upon being adjudged guilty of contempt, a person may be fined "not exceeding $500 or he many be imprisoned not exceeding 5 days, or both." Section 3-1-519, MCA ("Punishment"). Alternatively, under § 3-1-520, MCA, the contemnor may be sentenced to imprisonment to compel performance of an act which is within his power to perform.

[10] The District Court states that it imposed this sentence "pursuant to §§ 3-1-519 and -520, MCA, with emphasis on the '*imprisonment to compel performance provision.*'" We determine, however, that the two statutes provide exclusive sanctions for contempt and may not be imposed together. If, as the District Court purports, it was seeking to compel Huffine's performance of an act, it must proceed under § 3-1-520, MCA ("Imprisonment to compel performance"). Thus, we only address the legality of and proper procedure for imposing a sentence under § 3-1-520, MCA. Because the District Court did not purport to impose a sentence of confinement for a definite period not exceeding five days under § 3-1-519, MCA, we need not address that statute.

[11,12] The District Court sentenced Huffine to thirty days in jail or a fine of $500 to be paid within ten days of sentencing. The form of this sanction, confinement for a definite period or payment of a set fine, conflicts with the purpose the District Court sought to accom-

plish, compliance with its order. Section 3-1-520, MCA, states: "When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it. In that case, the act must be specified in the warrant of commitment." This statute envisions a sentence of imprisonment "singularly designed and intended to force the violator's compliance with the court's order." *Harber*, 755 P.2d at 641. Under § 3-1-520, MCA, performance of the act specified by the district court in the warrant of commitment is the contemnor's key to the jailhouse.

While the sentencing order appears to provide Huffine with a key, payment of a $500 fine, this is not the type of key envisioned by the Supreme Court. *See Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30. Payment of a fine is not the act which the court seeks to compel the contemnor to perform. Rather, it is an alternative sanction, one which could also be classified as criminal if the contemnor is given no opportunity to perform an act to avoid paying the fine. *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30. In this case, neither the order nor the bench warrant mention any affirmative act that Huffine could perform to cure the contempt and secure his release from jail or excuse him from paying the $500 fine. The U.S. Supreme Court has held:

> If the sentence is limited to imprisonment for a definite period, the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense. Such imprisonment operates, not as a remedy coercive in its nature, but solely as punishment for the completed act of disobedience.

*Gompers*, 441 U.S. at 442-43, 31 S.Ct. at 498. *See also Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30 (holding that any sentence of confinement that is for a determinate period of time is criminal); *Ex Parte* (Ala. 1955), 83 So.2d 241 (holding that when a sentence is for a definite period of time, the decree is a punishment for what has been done). Thus, while the District Court purports to have imposed this sentence to compel performance of an act, we determine that, in reality, the sentence of thirty days of confinement was to punish for past acts and, therefore, that Huffine's contempt proceeding is properly characterized as criminal.

[13] In Montana, criminal contempt of court is proscribed at § 45-7-309, MCA. Prosecution for criminal contempt must be carried out pursuant to the procedures set forth in Title 46, MCA, to ensure that criminal penalties are not imposed on someone who has not been afforded the proper protections. In this case, the District Court erred by imposing a punitive, criminal sentence on Huffine where no

charges had been brought under § 45-7-309, MCA, and where Huffine was not afforded the due process that he is guaranteed by the state and federal constitutions.

**[14-17]** The power to sentence a contemnor to confinement, thus depriving him of his liberty, is one that must be exercised with the utmost of caution. First, in order to properly characterize the contempt proceeding as criminal or civil, the district court must determine the purpose (to compel performance or to punish) it seeks to further by imposition of the sanction. Then, if the court's design is to impose a coercive sentence of confinement, it may proceed under the civil provision of § 3-1-520, MCA, by clearly stating in the sentencing order, an act (1) within the power of the contemnor to perform and (2) performance of which will secure his release. Only where criminal contempt charges are brought under § 45-7-309, MCA, and appropriate procedures followed, may a contemnor be sentenced to confinement for a definite period. Parenthetically, we recognize that the plain language of § 3-1-519, MCA, purports to allow a civil penalty of confinement for a definite term of up to five days. However, since the sentence in this case was imposed pursuant to § 3-1-520, MCA, and not § 3-1-519, MCA, we do not address the validity of § 3-1-519 at this time.

The contempt that is the subject of this opinion is based solely on Huffine's filing of a notice of appearance as counsel for Mr. Brue on March 14, 1995. Because Huffine has served seventeen days in the Park County Jail, we hold that the contempt charge for his filing of this particular document has been purged. However, Huffine has continued to file petitions in this Court on behalf of Mr. Brue in the matter of *State of Montana ex rel. DHES v. Brue*. In an Order issued September 30, 1997, we denied Huffine's petition for extraordinary relief, holding that he is not a real party in interest to the action. Order of the Montana Supreme Court, No. 97-540 (September 30, 1997). We also noted that by filing documents on behalf of Brue, Huffine again engaged in the unlawful practice of law. Although we did not hold him in contempt, we ordered that if he attempts to file any more documents or motions with this Court on behalf of Brue, he will be held in contempt.

CHIEF JUSTICE TURNAGE, JUSTICES GRAY, NELSON, REGNIER, TRIEWEILER and HUNT concur.

# HOUSE OF REPRESENTATIVE

ROLL CALL

JUDICIARY COMMITTEE

DATE 1-16-01

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. JIM SHOCKLEY, CHAIR | ✓ | | |
| REP. JEFF LASZLOFFY, V.C. | ✓ | | |
| REP. PAUL CLARK, V.C. | ✓ | | |
| REP. DARREL ADAMS | ✓ | | |
| REP. GILDA CLANCY | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. BILL EGGERS | ✓ | | |
| REP. STEVE GALLUS | ✓ | | |
| REP. GAIL GUTSCHE | ✓ | | |
| REP. CHRISTOPHER HARRIS | ✓ | | |
| REP. LINDA HOLDEN | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. JEFF MANGAN | ✓ | | |
| REP. BRAD NEWMAN | ✓ | | |
| REP. MARK NOENNIG | ✓ | | |
| REP. KEN PETERSON | ✓ | | |
| REP. DIANE RICE | ✓ | | |
| REP. BILL THOMAS | ✓ | | |
| REP. MERLIN WOLERY | ✓ | | |
| REP. CINDY YOUNKIN | ✓ | | |
| | | | |

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES**
**57th LEGISLATURE - REGULAR SESSION**
**COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN PAUL CLARK**, on January 23, 2001 at 8:00 A.M., in Room 137 Capitol.

**ROLL CALL**

**Members Present:**
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Jim Shockley, Chairman (R)
Rep. Steven Gallus (D)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted: **HB 262 - 1-18-01**
Executive Action: **HB 208 - DPAA**
**HB 156 - DPAA**
**HB 223 - DPAA**

**Motion: REP. HURDLE moved that HB 156 BE AMENDED to delete all of Section 2. #12**

**Discussion: Reps. Clancy, Adams, Shockley**

**Vote: Motion #12 failed 2-17 with Reps. Gutsche and Hurdle voting yes.**

**Motion/Vote: REP. MANGAN moved that HB 156 DO PASS AS AMENDED. #13. Motion carried 14-5 with Reps. Shockley, Hurdle, Newman, Thomas and Wolery voting no.**

## EXECUTIVE ACTION ON HB 208

**Motion: REP. HARRIS moved that HB 208 DO PASS. #14**

**Motion: REP. HARRIS moved that HB 208 BE AMENDED. #15**

**Discussion: Rep. Noennig, Harris**

**Vote: Motion carried unanimously 19-0**

**Motion/Vote: REP. MANGAN moved that HB 208 DO PASS AS AMENDED. #16 Motion carried unanimously 19-0.**

# HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 1-23-01

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. JIM SHOCKLEY, CHAIR | | | ✓ |
| REP. JEFF LASZLOFFY, V.C. | ✓ | | |
| REP. PAUL CLARK, V.C. | ✓ | | |
| REP. DARREL ADAMS | ✓ | | |
| REP. GILDA CLANCY | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. BILL EGGERS | ✓ | | |
| REP. STEVE GALLUS | | | ✓ |
| REP. GAIL GUTSCHE | ✓ | | |
| REP. CHRISTOPHER HARRIS | ✓ | | |
| REP. LINDA HOLDEN | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. JEFF MANGAN | ✓ | | |
| REP. BRAD NEWMAN | ✓ | | |
| REP. MARK NOENNIG | ✓ | | |
| REP. KEN PETERSON | ✓ | | |
| REP. DIANE RICE | ✓ | | |
| REP. BILL THOMAS | ✓ | | |
| REP. MERLIN WOLERY | ✓ | | |
| REP. CINDY YOUNKIN | ✓ | | |
| | | | |

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 1-23-01 Bill NO. HB 208 NUMBER #14

MOTION: Rep. Harris moved Do Pass

| Name | AYE | NO |
|---|---|---|
| Rep. Jim Shockley, Chairman | | |
| Rep. Jeff Laszloffy, Vice Chair Majority | | |
| Rep. Paul Clark, Vice Chair Minority | | |
| Rep. Darrel Adams | | |
| Rep. Gilda Clancy | | |
| Rep. Aubyn Curtiss | | |
| Rep. Bill Eggers | | |
| Rep. Steve Gallus | | |
| Rep. Gail Gutsche | | |
| Rep. Christopher Harris | | |
| Rep. Linda Holden | | |
| Rep. Joan Hurdle | | |
| Rep. Jeff Mangan | | |
| Rep. Brad Newman | | |
| Rep. Mark Noennig | | |
| Rep. Ken Peterson | | |
| Rep. Diane Rice | | |
| Rep. Bill Thomas | | |
| Rep. Merlin Wolery | | |
| Rep. Cindy Younkin | | |
| | | |

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 1-23-01 Bill NO. HB 208 NUMBER #15

MOTION: Rep. Harris moved an amendment
Motion carried unanimously 19-0

| Name | AYE | NO |
|---|---|---|
| Rep. Jim Shockley, Chairman | ✓ | |
| Rep. Jeff Laszloffy, Vice Chair Majority | ✓ | |
| Rep. Paul Clark, Vice Chair Minority | ✓ | |
| Rep. Darrel Adams | ✓ | |
| Rep. Gilda Clancy | ✓ | |
| Rep. Aubyn Curtiss | ✓ | |
| Rep. Bill Eggers | ✓ | |
| Rep. Steve Gallus | | |
| Rep. Gail Gutsche | ✓ | |
| Rep. Christopher Harris | ✓ | |
| Rep. Linda Holden | ✓ | |
| Rep. Joan Hurdle | ✓ | |
| Rep. Jeff Mangan | ✓ | |
| Rep. Brad Newman | ✓ | |
| Rep. Mark Noennig | ✓ | |
| Rep. Ken Peterson | ✓ | |
| Rep. Diane Rice | ✓ | |
| Rep. Bill Thomas | ✓ | |
| Rep. Merlin Wolery | ✓ | |
| Rep. Cindy Younkin | ✓ | |
| | | |
| | 19 | 0 |

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 1-23-01 Bill NO. HB 2028 NUMBER #16

MOTION: Rep. Mangan moved DPAA

| Name | AYE | NO |
|---|---|---|
| Rep. Jim Shockley, Chairman | ✓ | |
| Rep. Jeff Laszloffy, Vice Chair Majority | ✓ | |
| Rep. Paul Clark, Vice Chair Minority | ✓ | |
| Rep. Darrel Adams | ✓ | |
| Rep. Gilda Clancy | ✓ | |
| Rep. Aubyn Curtiss | ✓ | |
| Rep. Bill Eggers | ✓ | |
| Rep. Steve Gallus | | |
| Rep. Gail Gutsche | ✓ | |
| Rep. Christopher Harris | ✓ | |
| Rep. Linda Holden | ✓ | |
| Rep. Joan Hurdle | ✓ | |
| Rep. Jeff Mangan | ✓ | |
| Rep. Brad Newman | ✓ | |
| Rep. Mark Noennig | ✓ | |
| Rep. Ken Peterson | ✓ | |
| Rep. Diane Rice | ✓ | |
| Rep. Bill Thomas | ✓ | |
| Rep. Merlin Wolery | ✓ | |
| Rep. Cindy Younkin | ✓ | |
| | | |
| | 19 | 0 |

# HOUSE STANDING COMMITTEE REPORT

**January 23, 2001**


Mr. Speaker:

We, your committee on **Judiciary** report that **House Bill 208** (first reading copy – white) **do pass as amended**.

Signed: _____
*Representative Jim Shockley, Chair*

**And, that such amendments read:**

1. Page 3, line 21.
**Following:** "committed"
**Insert:** ", except that if the contempt arose from the violation of an order of the court issued after a hearing on the merits of the subject of the order, the judge who issued the order may punish the contempt or compel compliance with the order unless it is shown that the judge would not be impartial in addressing the contempt"

- END -

**Committee Vote:**
**Yes 19, No 0.**

**181418SC.hdc**

**HB 191** SPONSOR: Gallus, Steven SHORT TITLE: Revise minor in possession laws
BY REQUEST OF: Attorney General
REFERRED ON: 01/24/2001 HEARD ON: 02/05/2001
EXECUTIVE ACTION: 02/07/2001 -Bill Concurred -- VOTE: 7 - 2
FINAL DISPOSITION: 03/16/2001 Chapter Number Assigned

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**HB 195** SPONSOR: Wolery, Merlin SHORT TITLE: Revise transferable crime under youth court act -- dangerous drug
REFERRED ON: 02/06/2001 HEARD ON: 02/05/2001
REFERRED ON: 01/24/2001
EXECUTIVE ACTION: 02/05/2001 -Bill Concurred -- VOTE: 8 - 0
EXECUTIVE ACTION: 03/23/2001 -Bill Concurred -- VOTE: 6 - 0
FINAL DISPOSITION: 04/16/2001 Chapter Number Assigned

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**HB 201** SPONSOR: Davies, Bob SHORT TITLE: Create offense of theft by embezzlement
REFERRED ON: 02/21/2001 HEARD ON: 03/09/2001
EXECUTIVE ACTION: 03/09/2001 -Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

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**HB 208** SPONSOR: Harris, Christopher SHORT TITLE: Revise contempt of court laws
REFERRED ON: 01/31/2001 HEARD ON: 03/01/2001
EXECUTIVE ACTION: 03/23/2001 -Bill Concurred as Amended -- VOTE: 8 - 0
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

---

**HB 213** SPONSOR: Newman, Brad SHORT TITLE: Uniform interstate enforcement of domestic violence protection orders act
BY REQUEST OF: Attorney General
REFERRED ON: 03/07/2001 HEARD ON: 03/22/2001
EXECUTIVE ACTION: 03/26/2001 -Bill Concurred -- VOTE: 6 - 1
FINAL DISPOSITION: 04/12/2001 Chapter Number Assigned

---

**HB 214** SPONSOR: Shockley, Jim SHORT TITLE: Add district court judges in Ravalli and Cascade counties
REFERRED ON: 03/03/2001 HEARD ON: 03/16/2001
EXECUTIVE ACTION: 03/22/2001 -Bill Concurred as Amended -- VOTE: 7 - 2
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

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# MINUTES

## MONTANA SENATE
## 57th LEGISLATURE - REGULAR SESSION
## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 1, 2001 at 9:05 A.M., in Room 303 Capitol.

## ROLL CALL

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Mike Halligan (D)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

**Members Excused:**

Sen. Steve Doherty (D)
Sen. Ric Holden (R)

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 208, HB 119, HB 176, HB 182, 2/22/2001
Executive Action: HB 176

**Craig Thomas, Executive Director of the Board of Pardons and Parole,** said the Board supported the bill to clarify the perceived problems with the statutes. However, the amendment to the bill complicated the situation and introduced a fiscal impact. Currently the Board conducted hearings using hearings officers to review inmates who committed crimes prior to March 20, 1989. The amendment required a majority of the Board review the offenders who committed crimes prior to March 20, 1989. In all honesty, the Board did not have sufficient resources to provide two board members to conduct the hearings. He supported the bill, but not the amendments.

Opponents' Testimony:

**None**

Questions from Committee Members and Responses:

**SEN. GERALD PEASE** questioned how the bill would change the Board of Pardon's authority. **REP. VICK** replied he didn't think it would affect their practice in any way.

**SEN. PEASE** re-referred the question. **Craig Thomas, Executive Director of the Board of Pardons and Parole,** said the Board conducted hearings in various ways. The original statute allowed the Board to designate hearings officers who conducted hearings at pre-release centers and regional facilities, and a few out of state facilities with Montana prisoners. They took the testimony from various sources, then made recommendations to the Board. The Board made the final decision. Originally, the bill clarified the Board's current procedures, excluding the House Judiciary committee amendment. The amendment required the Board to change procedures and provide for two board members to conduct all the hearings.

Closing by Sponsor:

**SEN. VICK closed on HB 119** saying he was comfortable in removing the House amendment. He felt the bill should pass either way because it was a benefit to the Board and the system. He reiterated that the Board wanted the amendment removed.

## HEARING ON HB 208

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN**

Proponents: **Robert Throssell, Montana Magistrates Association**

Opponents: None

Opening Statement by Sponsor:

**REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN, opened on HB 208**, which passed unanimously through the House Judiciary Committee and the House. This indicated there was no opposition to the bill. It clarified the contempt of court procedures in Montana. Those procedures were addressed in several Supreme Court decisions and they differentiated between civil and criminal contempt and they needed to be observed. The bill also said due process must be followed in both types of contempt proceedings. The bill codified the Supreme Court decisions, making it clear to judges, litigants, and attorneys the difference between civil and criminal contempt. Even when contempt was committed in the presence of the court, there must be a modicum of due process. He noted the amendment that wasn't addressed by the Supreme Court decisions. The amendment clarified when a court had a contempt situation and it followed a court order, it was not necessary to bring in another judge to hear the contempt proceeding, unless it could be shown that the judge was not impartial. He said it was important to have this clear law on the books.

Proponents' Testimony:

**Robert Throssell, Montana Magistrates Association**, said Justice of the Peace and City Court Judges heard many contempts that were their own orders, i.e.: imposition of fines. If it necessitated calling in a second judge, it would bring the lower court proceedings to a halt. The amendment was necessary to make it a workable bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

**SEN. JERRY O'NEIL** stated that he had requested a judge to be disqualified and requested a jury trial when he was charged with contempt of court. The judge refused the requests. He asked if the bill would allow the right to disqualify a judge and request a jury trial on a contempt of court charge. **REP. HARRIS** replied the bill followed current procedure. Full due process rights would be afforded, but not necessarily a jury trial. In a criminal proceeding, the standard of proof would have to be proven beyond a reasonable doubt. The bill didn't inject a trial by jury and neither the U.S. nor Montana Supreme Courts said

contempt must be handled by a jury. It could be handled by an impartial judge.

**SEN. O'NEIL** clarified that the bill required a different judge, so he wouldn't have to disqualify the judge. **REP. HARRIS** said the contempt proceeding itself would provide full due process rights. If the contempt was committed in the presence of the court, then the court could impose civil or criminal summary punishment, provided the judicial process integrity was at stake. When contempt was committed outside the court, then the judge normally could not hear the case. That addressed the disqualification issue. With the exception of what was accomplished in the amendment, which stated if a hearing had already been conducted on the merits and there was a violation of the court order, then the judge who was the subject of the contempt, could address it unless it was shown that the judge was not impartial. He asked if that answered the question.

**SEN. O'NEIL** said not quite and clarified his question. In assisting someone else by writing up documents, he was found to be in contempt. He did not prepare them in court, but delivered them to the person in jail. He didn't know if it qualified as in or out of court contempt. **REP. HARRIS** replied regardless of the merits of that specific issue, it seemed like an out of court allegation and it would be clear that the judge who cited contempt could not address the contempt because of due process rights.

**SEN. MIKE HALLIGAN** asked if **REP. HARRIS** saw the letter from Judge Langton, EXHIBIT(1). **REP. HARRIS** said no.

**SEN. HALLIGAN** asked for his opinion on the letter. **REP. HARRIS** said the Judge was a participant in one of the cases before the Supreme Court. He said a contempt committed in the presence of the court could be punished summarily; it was in current law and the bill. The bill, required by the Supreme Court decision, including the case that involved Judge Langton, said that the accused of the contempt had an opportunity to present his/her side of the story. It was required by due process and required by the Supreme Court decisions. The bill followed the due process requirement as laid out by the Montana Supreme Court. It did not interfere with the ability of a judge to maintain discipline in a courtroom or to impose necessary punishments to maintain that discipline and the integrity of the judicial process.

**Closing by Sponsor**:

**REP. HARRIS closed on HB 208** saying it was a good bill that offered clarifications. In the long run it would save time, energy, and money in terms of avoiding unnecessary litigation.

**VICE CHAIRMAN GRIMES** clarified temporary appointments were the intent. **REP. NEWMAN** said yes.

Closing by Sponsor:

**REP. NEWMAN closed on HB 182.** He asked the committee to consider all remarks. He believed the bill was one piece in a difficult puzzle. He said Montanans had a Constitutional right to full and speedy legal redress. He said the three bills were means of putting teeth into that Constitutional right.

## EXECUTIVE ACTION ON HB 119

Discussion:

**SEN. AL BISHOP** noted proposed amendments and asked **Valencia Lane** to explain them.

**SEN. DUANE GRIMES** asked if the amendments were simple enough to cover now.

**Valencia Lane, Legislative Staffer**, replied the bill originally did not amend 46-23-104. The House put on amendments toward that code. On page 2 of the bill, the amendments required two board members to travel out of state. The Board of Pardons and Paroles objected to those amendments. It wasn't difficult to remove.

**SEN. JERRY O'NEIL** felt those amendments were an attempt to stop it acting as an expos facto law because of prisoners' rights.

**Ms. Lane** said she didn't know the House concerns, but it did appear they were trying to preserve certain rights that existed before a certain date. No one addressed that question, so she didn't know the reasoning.

**SEN. GRIMES** said they would hold on HB 119.

## EXECUTIVE ACTION ON HB 208

Discussion:

**Valencia Lane, Legislative Staffer**, mentioned the amendments requested by Judge Langton, **exhibit (1)**. However, the sponsor did not consider them friendly amendments.

**SEN. DUANE GRIMES** said the amendments should be before the committee to consider, so they wouldn't take action on the bill.

He felt there could be an issue about whether or not a judge could issue an order on the spot or not.

## EXECUTIVE ACTION ON HB 176

**Motion**: **SEN. HALLIGAN** moved that **HB 176 BE CONCURRED IN.**

**Discussion**:

**SEN. WALT McNUTT** asked which of the two fiscal notes applied.

**VICE CHAIRMAN DUANE GRIMES** noted the one with the later date wasn't signed by **REP. JENT**, but the fourth assumption was interesting.

**SEN. McNUTT** wondered if it would become a cat and dog bill and not go anywhere. He asked if there was an explanation of why it might not cost $10,000 a year.

**SEN. MIKE HALLIGAN** said the bill was a very good idea and over the long-term it prevented creation of judicial districts. He said judges would want to get the cases done as quickly as possible. He acknowledged that it could be a dog and cat.

**SEN. JERRY O'NEIL** said the government was supposed to provide justice for its citizens and this was a way to increase the justice system of Montana and even if it did cost more money it was a necessary bill.

**Vote**: Motion that **HB 176 Be Concurred In carried 6-0; SEN. JERRY O'NEIL** to carry the bill; **SEN. STEVE DOHERTY, SEN. RIC HOLDEN,** and **SEN. LORENTS GROSFIELD** excused.

SENATE JUDICIARY
Exhibit No. 1
Date 3/1/01
Bill No. HB 208

# STATE OF MONTANA TWENTY-FIRST JUDICIAL DISTRICT

RAVALLI COUNTY

JEFFREY H. LANGTON
DISTRICT COURT JUDGE

RAVALLI COUNTY COURTHOUSE
COURTHOUSE BOX 5012
HAMILTON, MONTANA 59840
PHONE: (406) 375-6241 FAX: (406) 375-6382

February 26, 2001

Hon. Lorents Grosfield
Senate Judiciary Committee
State Capitol
P.O. Box 201702
Helena, MT 59620-1702

Dear Senator Grosfield:

I understand your committee is about to take up House Bill No. 208 which purports to clarify the law of contempt of court. Unfortunately the bill, as presently written, goes well beyond clarification and purports to abolish a court's remedies for direct contempt committed in the presence of the court. I assume this was an oversight, but in any event it needs to be corrected. Contempt powers are inherent court powers and something as crucial as remedies for direct contempts may not be abolished by the Legislature without creating a serious separation of powers issue.

The current text would leave a Court with no direct remedy if a litigant, lawyer, or spectator disrupted court proceedings except to request the county attorney to prosecute the person for criminal contempt in the Justice Court. This would even apply to the Supreme Court.

I have attached my suggestions for amendments to preserve the court's direct contempt powers which follow existing Supreme Court precedent.

Thank you for your attention to this matter which is of great importance to the judges of this state.

Sincerely,

Hon. Jeffrey H. Langton
District Judge

JHL:sg

Attachment

cc: Representative Jim Shockley
Senator Fred Thomas
Senator Dale Berry
Hon. Ed McLean

**MINUTES**

**MONTANA SENATE**
**57th LEGISLATURE - REGULAR SESSION**
**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001 at 8:15 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing & Date Posted: None
Executive Action: HB 195, HB 208, HB 219, HB 254, HB 208, HB 261, HB 359, HB 521, HB 563, HJ 17, HB 496, HB 290, HB 570, HB 182

**EXECUTIVE ACTION ON HB 195**

**Motion: SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.**

**Discussion:**

**SEN. DUANE GRIMES** said this added a penalty to those youth who could be tried as an adult and would add criminal possession of dangerous drugs with the intent to distribute.

**Vote: Motion carried 6-0 with SEN. DOHERTY, SEN. HALLIGAN and CHAIRMAN GROSFIELD being excused.**

## EXECUTIVE ACTION ON HB 208

**Discussion:**

**Valencia Lane, Legislative Staff**, said there were amendments for HB 208 and they were prepared at the suggestion of the district court judges. She said the sponsor did not like the amendments but many district judges wanted the amendments.

**SEN. GRIMES** suggested to hold off action on this bill.

## EXECUTIVE ACTION ON HB 219

**Motion: SEN. MCNUTT moved HB 219 BE CONCURRED IN.**

**Discussion:**

**SEN. GRIMES** said he had some concern with inadvertent drive offs, but this issue has been resolved.

**SEN. WALT MCNUTT** said if he drove into a super bumper and inadvertently drove off, he would not be prosecuted under this. He said what they were looking for blatant violators of this issue.

**SEN. GRIMES** read line 26, page three and asked when this would become effective. **Valencia Lane** said if they look at MCA 46-21-102 there were guidelines offered. She said it meant when the time and chance had passed for appeals.

**Vote: Motion carried 6-0**

## EXECUTIVE ACTION ON HB 254

**Discussion:**

debtor and would expire in 120 days. He added they could keep the second sentence.

**Vote: Motion failed 1-7 with SEN. O'NEIL voting aye.**

**Substitute Motion: SEN. HALLIGAN Withdrew his first motion and made a substitute motion to change Subsection(5)(a) "a levy applies to earnings due on or after the date of service through the expiration of the writ."**

**Discussion:**

**SEN. O'NEIL** asked about the earnings that were earned before the service of the writ and if they would be executable. **SEN. HALLIGAN** answered by using the word "due" they were earned upon that date and were due.

**Vote: Motion carried unanimously.**

**Discussion:**

**SEN. GRIMES** referred to Subsection (5), and said it discussed multiple levies having priority according to the date and time of service. He said this was the way it was currently. He wondered about the language.

**SEN. O'NEIL** asked if they would need a clause to require the levying officer to notify the employer when the judgment was satisfied. **SEN. GRIMES** stated an employer would be withholding for 120 days and if the levy officer didn't offer the employer any further instructions that was their problem.

**SEN. MCNUTT** said the employee would keep track of when it was going to be paid off and they would make sure the employer was not withholding any more money from their paycheck.

**Motion/Vote: SEN. HALLIGAN moved HB 245 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.**

## EXECUTIVE ACTION ON HB 208

**Discussion: SEN. O'NEIL** asked what line 28 meant. **SEN. GRIMES** explained it was existing law.

**SEN. HALLIGAN** said he did not fully understand contempt law but there were some amendments needing to be put on the bill HB020801.avl **EXHIBIT(2)**.

**SEN. O'NEIL** said he did not like the amendments due to the judge allowing whatever he wanted and the reason for this bill was to add control with the issue.

**SEN. GRIMES** referred to page three and added somebody would have the right to defend themselves when they were in contempt of court. The amendments stated there would be a limit on this.

**Motion/Vote: SEN. HALLIGAN moved the amendments HB020801.avl. Motion carried unanimously.**

**Motion/Vote: SEN. HALLIGAN moved HB 208 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.**

***{Tape 2; Side A}***

## EXECUTIVE ACTION ON HB 261

**Motion: SEN. HALLIGAN moved HB 261 BE CONCURRED IN.**

**Discussion:**

**SEN. O'NEIL** discussed an amendment HB026101.avl **EXHIBIT(3)**.

**SEN. GRIMES** said, "purposely and knowingly," was clear language and it may create a loophole.

**SEN. HALLIGAN** said the bill was trying to tie everything into one unlawful act and it was already clear. He added a prosecutor couldn't prosecute without the connection to dangerous drugs.

**SEN. O'NEIL** referred to Section(D) and felt there needed to be more work done on the amendment. He offered an incident when he worked in a hardware store.

**SEN. GRIMES** said it does say precursors to dangerous drugs. **SEN. O'NEIL** said it related to those chemicals and within Section(D) a person could be guilty if they were selling dangerous drugs.

**SEN. HALLIGAN** said it would be better to strike Section(D). **SEN. O'NEIL** said he didn't think they should strike it because they want to make it illegal for somebody to sell chemicals that they know would be used for dangerous drugs.

**SEN. HALLIGAN** said there were lots of people selling the precursors to these dangerous drugs and they don' t know what the

SENATE JUDICIARY
Exhibit No. 2
Date 3/23/01
Bill No. HB 208

Amendments to House Bill No. 208
3rd Reading Copy (Blue)

Requested by Senator Lorents Grosfield

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 1, 2001 (8:53AM)

1. Page 2, line 21.
**Following:** "contempt"
**Strike:** "only"
**Following:** "under"
**Insert:** "3-1-511 or"

2. Page 2, line 22.
**Following:** "required"
**Strike:** ", and the"
**Insert:** ". The"
**Following:** "apply"
**Insert:** "only to criminal contempt prosecutions under 45-7-309"

3. Page 2, line 27 through line 28.
**Following:** "order to" on line 27
**Strike:** remainder of line 27 through "the court" on line 28
**Insert:** "restore order, maintain the dignity or authority of the court, or prevent delay"

4. Page 3, line 3.
**Following:** "may"
**Strike:** "not"
**Following:** "section"
**Insert:** "by a fine in an amount not to exceed $500 or by imprisonment for a term not to exceed 30 days, or both, and by any other reasonable conditions or restrictions that the court may consider appropriate under the circumstances"

- END -



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# SENATE STANDING COMMITTEE REPORT



Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 208** (third reading copy - blue) **be concurred in as amended.**

Signed: _____
*Senator Lorents Grosfield, Chair*

To be carried by Senator Lorents Grosfield

**And, that such amendments read:**

1. Page 2, line 21.
**Following:** "contempt"
**Strike:** "only"
**Following:** "under"
**Insert:** "3-1-511 or"

2. Page 2, line 22.
**Following:** "required"
**Strike:** ", and the"
**Insert:** ". The"
**Following:** "apply"
**Insert:** "only to criminal contempt prosecutions under 45-7-309"

3. Page 2, line 27 through line 28.
**Following:** "order to" on line 27
**Strike:** remainder of line 27 through "the court" on line 28
**Insert:** "restore order, maintain the dignity or authority of the court, or prevent delay"

4. Page 3, line 3.
**Following:** "may"
**Strike:** "not"
**Following:** "section"
**Insert:** "by a fine in an amount not to exceed $500 or by imprisonment for a term not to exceed 30 days, or both, and

HB 208

**Committee Vote:**
**Yes 8, No 0.**

**SENATE**

SB

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES**
**57th LEGISLATURE - REGULAR SESSION**
**CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 208**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on April 17, 2001 at 2:00 P.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Rep. Mark Noennig (R)
Rep. Christopher Harris (D)
Rep. Ken Peterson (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Staff
Mary Lou Schmitz, Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted:
Executive Action: **HB 208**

**Senator Grosfield** asked **Rep. Harris** to explain his Bill and the Senate amendments. **Rep. Harris** said the only amendment he is concerned about has to do with page 2, lines 22 and 23. Despite some contrary language he is starting to "warm up" to the Senate amendments and understands the logic of them.

**Mr. MacMaster** said he checked the Senate amendments because he wrote the Bill to codify its statutory law because of two recent compelling Supreme Court cases. In one of them it said "prosecutions for criminal contempt must be carried out pursuant to the procedures set forth in Title 46 to ensure that criminal penalties are not imposed on someone who has not been afforded the proper protection". He said there is a Title 46 Section

under which you can impose a criminal contempt punishment and there is a Title 3 Section under which you can impose a criminal contempt punishment. Montana Criminal Contempt Court describes Title 45-7-309, then it goes on to say prosecution for criminal contempt must be carried out using Title 46 procedures. The Court doesn't specifically mention Title 3 Section which is at the bottom of page 2 of the Bill.

He is not sold that there is anything wrong with the Senate amendments either.

**Discussion:** **Reps. Peterson, Noennig, Senator Doherty to Rep. Harris and Mr. MacMaster for further clarification. Mr. MacMaster** said what the cases say is you don't charge or accuse the person of criminal contempt. You accuse them or charge them with contempt and what makes the contempt civil or criminal is at the point you impose the penalty and if the penalty is imposed in an attempt to get you to do an act, look at the penalty, then that makes it a criminal contempt. If the penalty is designed truly to punish you, whether or not you do that act, then th`at makes it a civil contempt. Under 3-1-511, you can have either one.

**Motion/Vote:** **Rep. Harris** moved as follows: Page 2, Line 21 through 23 with amendments that say "A person may be found guilty of and penalized for criminal contempt by proof beyond a reasonable doubt. The procedures provided in Title 46 apply to criminal contempt prosecutions, except those under 3-1-511".

**Motion carried unanimously 6-0.**

***{Tape : 1; Side : A; Approx. Time Counter : 0.1 - 24}***

**ADJOURNMENT**

Adjournment: 2:24 P.M.

SEN. LORENTS GROSFIELD, Chairman

MARY LOU SCHMITZ, Secretary

LB/mls

**EXHIBIT(cch84hb0208aad)**

# FREE CONFERENCE COMMITTEE

**on House Bill 208**
**Report No. 1, April 17, 2001**



Mr. Speaker and Mr. President:

We, your Free Conference Committee on **House Bill 208**, met April 17, 2001, and considered:

1. Senate Committee on Judiciary amendments to third reading copy, dated March 23, 2001.

For the House:

Representative Noennig, Vice-Chair

Representative K. Peterson

Representative Harris

Amendment Coordinator

Chief Clerk of the House

For the Senate:

Senator Grosfield, Chair

Senator Bishop

Senator Doherty

We recommend that **House Bill 208** (reference copy - salmon) be amended as follows:

1. Page 2, line 21 through line 22.
**Strike:** "under" on line 21 through "Proof" on line 22
**Insert:** "by proof"
**Strike:** "is required" on line 22

**ADOPT**

**REJECT**

**AC HB 208-1**

**861610FC.hdc**

2. Page 2, line 23.
**Strike:** "ONLY"
**Strike:** "UNDER 45-7-309"
**Insert:** ", except those under 3-1-511"

- END -

AN ACT CLARIFYING CONTEMPT OF COURT PROCEDURE; CLARIFYING THE MEANING OF CIVIL AND CRIMINAL CONTEMPT; PROVIDING FOR DUE PROCESS IN CONTEMPT PROCEEDINGS AS REQUIRED BY MONTANA SUPREME COURT OPINIONS; AMENDING SECTIONS 3-1-501, 3-1-511, 3-1-513, 3-1-518, 3-1-520, 3-10-402, AND 3-11-303, MCA; AND REPEALING SECTIONS 3-1-519, 3-10-403, AND 3-10-404, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 3-1-501, MCA, is amended to read:

"**3-1-501. What acts or omissions are contempts -- civil and criminal contempt.** (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as ~~such~~ that individual without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning

from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the ~~same~~ communication to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

(3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

(4) A person may be found guilty of and penalized for criminal contempt by proof beyond a reasonable doubt. The procedures provided in Title 46 apply to criminal contempt prosecutions, except those under 3-1-511."

**Section 2.** Section 3-1-511, MCA, is amended to read:

"**3-1-511. Procedure -- contempt committed in ~~the~~ presence of ~~the~~ court.** When a contempt is committed in the immediate view and presence of the court or judge at chambers~~,~~ and the contemptuous conduct requires immediate action in order to restore order, maintain the dignity or authority of the court, or prevent delay, it may be punished summarily~~,~~. ~~for which an~~ An order must be made reciting the facts

~~as occurring~~ that occurred in ~~such~~ the judge's immediate view and presence and adjudging that the person proceeded against is ~~thereby~~ guilty of a contempt and that ~~he~~ the person must be punished as ~~therein~~ prescribed in the order. An order may not be issued unless the person proceeded against has been informed of the contempt and given an opportunity to defend or explain the person's conduct. A person may be adjudged guilty of and penalized for criminal contempt under this section by a fine in an amount not to exceed $500 or by imprisonment for a term not to exceed 30 days, or both, and by any other reasonable conditions or restrictions that the court may consider appropriate under the circumstances."

**Section 3.** Section 3-1-513, MCA, is amended to read:

"**3-1-513. Warrant ~~of attachment or commitment~~ -- statement of charge**. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant ~~of attachment~~ may be issued to bring the person charged to the court to answer ~~or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause~~ the charge. The warrant must be accompanied by an adequate and specific statement of the charge. The answer to the charge must be followed by a hearing under 3-1-518."

**Section 4.** Section 3-1-518, MCA, is amended to read:

"**3-1-518. Hearing on contempt not committed in immediate view and presence of court or judge at chambers**. (1) When ~~the~~ a person arrested for a contempt not committed in the immediate view and presence of the court or judge at chambers has been brought up or appeared, the court or judge ~~must~~ shall proceed to investigate the charge, ~~must hear~~ shall schedule and hold a hearing on any answer ~~which~~ that the person arrested may make to the ~~same~~ charge, and may examine witnesses for or against ~~him~~ the person, for which an adjournment may be had from time to time, if necessary. The judge investigating the charge and scheduling and presiding over the hearing may not be the judge against whom the contempt was allegedly committed, except that if the contempt arose from the violation of an order of the court issued after a hearing on the merits of the subject of the order, the judge who issued the order may punish the contempt or compel compliance with the order unless it is shown that the judge would not be impartial in addressing the contempt.

(2) The charged person must be given a reasonable opportunity to obtain counsel and prepare a defense or explanation prior to the hearing. The charged person may testify and call witnesses at the hearing."

**Section 5.** Section 3-1-520, MCA, is amended to read:

"**3-1-520. ~~Imprisonment~~ Penalty to compel performance.** When the sanction imposed for a contempt ~~consists in the omission to~~ seeks to compel the contemnor to perform an act ~~which~~ that is ~~yet~~ in the power of the ~~person~~ contemnor to perform, ~~he~~ the contemnor may be ~~imprisoned~~ incarcerated, subjected to a fine in an amount not to exceed $500, or both, until ~~he shall have performed it~~ the contemnor has performed the act. ~~In that case, the~~ The act must be specified in the warrant of commitment."

**Section 6.** Section 3-10-402, MCA, is amended to read:

"**3-10-402. Proceedings ~~-- contempt committed in presence of court~~.** When a contempt is committed, whether or not it is in the immediate view and presence of the justice, ~~it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed~~ the procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

**Section 7.** Section 3-11-303, MCA, is amended to read:

"**3-11-303. Contempts a city judge may punish for -- procedure.** (1) A city judge may punish for contempt persons guilty of only the following acts ~~and no other~~:

~~(1)~~(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

~~(2)~~(b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by ~~him~~ the judge tending to interrupt the due course of a trial or other judicial proceeding;

~~(3)~~(c) disobedience or resistance to the execution of a lawful order or process made or issued by

the judge;

~~(4)~~(d) disobedience to a subpoena ~~duly~~ served or refusal to be sworn or to answer as a witness;

~~(5)~~(e) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(2) The procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

**Section 8. Repealer.** Sections 3-1-519, 3-10-403, and 3-10-404, MCA, are repealed.

- END -